

described, and hence not participating in the hearing as parties. The notice shall fix a time deadline for the submission of such comments which shall be not later than the date set for commencement of the hearing. Such comments shall be received in evidence at the commencement of the hearing. The Administrator in making any decision based upon the record shall take into account the unavailability of cross-examination in determining the weight to be accorded such comments.

(e) *Promulgation in absence of objection.* If no objection is filed pursuant to this section, then the Administrator shall promulgate the final standards on the basis of the Agency's statement of basis and purpose and any public comments received pursuant to paragraph (d) of this section.

§ 104.4 Statement of basis and purpose.

Whenever the Administrator publishes a proposed effluent standard, the notice thereof published in the FEDERAL REGISTER shall include a statement of the basis and purpose of the standard or a summary thereof. This statement shall include:

- (a) The purpose of the proposed standard;
- (b) An explanation of how the proposed standard was derived;
- (c) Scientific and technical data and studies supporting the proposed standard or references thereto if the materials are published or otherwise readily available; and
- (d) Such other information as may be reasonably required to set forth fully the basis of the standard.

Where the notice of the proposed rule-making summarizes the full statement of basis and purpose, or incorporates documents by reference, the documents thus summarized or incorporated by reference shall thereupon be made available by the Agency for inspection and copying by any interested person.

§ 104.5 Docket and record.

Whenever the Administrator publishes a notice of hearing under this part, the hearing clerk shall promptly establish a docket for the hearing. The docket shall include all written objections filed by any party, any public

comments received pursuant to § 104.3(d), a verbatim transcript of the hearing, the statement of basis and purpose required by § 104.4, and any supporting documents referred to therein, and other documents of exhibits that may be received in evidence or marked for identification by or at the direction of the Presiding Officer, or filed by any party in connection with the hearing. Copies of documents in the docket shall be available to any person upon payment to the Agency of such charges as the Agency may prescribe to cover the costs of duplication. The materials contained in the docket shall constitute the record.

§ 104.6 Designation of Presiding Officer.

The Chief Administrative Law Judge of the Agency may preside personally at any hearing under this part, or he may designate another Administrative Law Judge as Presiding Officer for the hearing. In the event of the unavailability of any such Administrative Law Judge, the Administrator may designate a Presiding Officer. No person who has any personal pecuniary interest in the outcome of a proceeding under this part, or who has participated in the development or enforcement of any standard or proposed standard at issue in a proceeding hereunder, shall serve as Presiding Officer in such proceeding.

§ 104.7 Powers of Presiding Officer.

The Presiding Officer shall have the duty to conduct a fair hearing within the time constraints imposed by section 307(a) of the Act. He shall take all necessary action to avoid delay and to maintain order. He shall have all powers necessary to these ends, including but not limited to the power to:

- (a) Rule upon motions and requests;
- (b) Change the time and place of the hearing, and adjourn the hearing from time to time or from place to place;
- (c) Examine and cross-examine witnesses;
- (d) Admit or exclude evidence; and
- (e) Require any part or all of the evidence to be submitted in writing and by a certain date.